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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1875 OF 2007
WITH
NOTICE OF MOTION NO.2518 OF 2007
IN
SUIT NO.1875 OF 2007

Jagdish K. Padte Plaintiff
versus
Laxmikant K. Padte & others Defendants

Mr.R.A.Thorat a/w R.D.Thorat for plaintiff.

Mr.Nitin Mulye for defendants 2 to 4.

Mr.S.H.Patel for defendant no.1.

CORAM : A.M.KHANWILKAR, J.

DATE : 17th August 2007

PC :

1. Counsel for the plaintiff on instructions states that the plaintiff intends to withdraw this suit and instead file a substantive suit for the relief of partition and such further relief/s as may be necessary and permissible by law.

2. Counsel for the defendants, however, has opposed the request of granting liberty to the plaintiff. The only reason indicated by the

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counsel for the defendants for such objection, is that some consent terms were filed before the City Civil Court on account of which it is not open to the plaintiff to ask for relief of partition. That issue will be addressed in the proposed suit to be filed by the plaintiff. For the time being, suffice it to observe that there is nothing on record to indicate that the plaintiff is precluded from filing such a suit for partition. In the circumstances, this suit is allowed to be withdrawn with liberty to file such other suit as may be permissible by law. All questions in that behalf including maintainability of such a suit are expressly left open to be decided at the appropriate stage. Refund as per rules.

3. In view of this order, the Notice of Motion No.2518 of 2007 does not survive and stands dismissed as such.

(A.M.KHANWILKAR, J.)